IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/11/2004

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THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.6356 of 2000

The Management of
Tamil Nadu State Apex Co-op. Bank
233, N.S.C.Bose Road
Chennai 600 001. ... Petitioner

-Vs-

1. The Workmen
rep. by its Secretary
The Tamil Nadu State Co-op. Bank
Employees Union,
233, N.S.C.Bose Road
Chennai 600 001.

2.The Presiding Officer
Industrial Tribunal
2nd Floor, City Civil Court Buildings
High Court, Chennai 600 104. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, to call for the records from the second respondent relating to the Award dated 26.02.1999 in I.D. No.65/90 published in the Tamil Nadu Government Gazette Part II Sec.2 supplement dated 28.07.1999 and quash the same.

!For Petitioner : Mr.C.K.Chandrasekaran
for M/s Row and Reddy

For Respondents : Mr.Venkataraman
for M/s.Aiyar and Dolia for R1.

:ORDER
The petitioner which is the Tamil Nadu State Apex Cooperative Bank is aggrieved against the award of the second respondent/ Industrial Tribunal dated 26.02.1999 made in I.D.No.65 of 1990. In the said dispute, the issue which was referred for adjudication was to prescribe the manner of creation of reserve fund under Clause-(v) of Item No.2 of iii-schedule appended to Payment

of Bonus Act, 1965 in respect of Tamil Nadu State Apex Cooperative Bank Limited and accordingly to determine the allocable surplus for the accounting years 1984-85 to 1987-8 8 and to fix the quantum of bonus payable to the employees of the above said bank for the above said years.

2. The brief facts which lead to the culmination of the above said dispute can be stated as under:
The petitioner Bank is admittedly a Cooperative Society registered under the provisions of the Tamil Nadu Cooperative Societies Act. It is also not in dispute that the petitioner Bank is governed by the provisions of the Payment of Bonus Act, 1965 and falls within the definition of Banking Company as defined under Section 2(8) of the Payment of Bonus Act. For the accounting years 1984-85 to 1987-88, the workmen were paid the minimum bonus of 8.33% as according to the petitioner, after providing for the necessary deductions as

per the Payment of Bonus Act and also based on the directives of the Reserve Bank of India, the calculations made under the Payment of Bonus Act enabling the petitioner only to declare the minimum bonus of 8.33%.

3. The petitioner relied upon Exs.M3 and M.4 which are the Reserve Bank direction and the clarification letter respectively, as regards certain deductions to be made as per Section 6(d) of the Payment of Bonus Act.

4. In the above stated background, the question that was posed for consideration before the Tribunal was whether by virtue of the application of Section 6(d) read along with Item No.2 of the (iii)-schedule, the petitioner bank was entitled to claim that the deduction made to an extend of 40% to create Reserve Fund from the net profit for the purpose of calculation of bonus was justified.

5. The Tribunal before carrying out the above said exercise, relied upon the decision of this Court reported in Vellore Central Cooperative Bank vs. I.T.Madras and others (1989(2) LLJ 453), held that by virtue of the said decision, the petitioner though a cooperative society registered under the Tamil Nadu Cooperative Societies Act, would still be a banking institution falling under Section 2(8) of the Act and therefore it would be entitled only to go by what is provided under Item No.2 of the (iii)-schedule read along with Section 6(d) of the Act. Thereafter, the Tribunal held that even going by the said Item No.2 Clause (iv) (a) and (b), the petitioner could have made a deduction under either of the above said sub-clause (a) or (b) and not of both. As stated earlier, the deduction made by the petitioner to create Reserve Fund in the relevant accounting years was 40% of the sum from the net profit. The Tribunal was of the view that of the 40% so provided, while 25% would be the sum which was available to the petitioner to be deducted by virtue of Section 17(1) of the Banking Regulation Act viz., the sum which could be deducted for the purpose of creating a reserve fund, the additional sum of 15% which was deducted in addition to the said 25% was contrary to section 6(d) read along with Item No.2(iv) (a) and (b) of (iii)-schedule of the Payment of Bonus Act.

6. In this context, when a reference is made to Exs.M.3 and M.4 which are the directives issued by the Reserve Bank of India in accordance with Section 6(d) and Item No.2(iv) of (iii)-schedule of the Payment of Bonus Act as well as Section 17(1) of the Banking Regulation Act, I find that in Ex.M.3 dated 11.10.l965, the Reserve Bank of India directed all Cooperative Banks to contribute a maximum of 15% of the net profit towards agricultural credit stabilization fund along with its regular contribution to the statutory reserve fund which would be 25% of the net profit. In all it provided for 40% of the net profit in so far as the cooperative banks were concerned. In Ex.M.3 it was also suggested that in the State where the Cooperative Societies Act provided for contribution to the statutory reserve fund at a rate exceeding 25% of the net profit suitable amendments in the said Act should be made. Subsequently, by way of clarification, Ex.M.4 came to be issued on 30.09.1966 which made it clear that whatever direction given in Ex.M.3 to the Cooperative Banks to make deductions to the maximum level of 40% would fall within Item No.2(iv)(b) of the (iii)schedule of the Payment of Bonus Act. Thus the Reserve Bank of India made it crystal clear under Ex.M.4 as to the purport and intent of its earlier directions made in Ex.M.3.

7. A combined reading of Exs.M.3 and M.4 therefore was clear enough to state that the petitioner/bank was well within its limits when it made a deduction to create Reserve Fund to the extent of 40% in its net profit during the relevant years viz., 4-85 to 1987-88 and such a deduction of 40% having fallen under Item 2(iv)(b) of (iii)schedule of the Payment of Bonus Act and the said sum being higher than what was otherwise provided by way of normal deduction under 17(1) towards reserve fund which can only be to an extent of 25%, the petitioner could have made a calculation for the purpose of arriving at the bonus payable to its employees by giving credit to the said 40% deduction so made. Therefore, there was no scope to find fault with the allocable surplus arrived at by the petitioner by taking into account the 40% deduction in the net profit when it declared a minimum bonus of 8.33 to its employees.

8. The conclusion to the contrary made by the Tribunal under the impugned award cannot therefore be sustained. The award is liable to be set aside and accordingly set aside.

9. In the result, the writ petition is allowed. No costs.

Index:yes/
Internet:yes

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To
1. The Secretary,
The Tamil Nadu State Co-op. Bank
Employees Union,
233, N.S.C.Bose Road
Chennai 600 001.

2.The Presiding Officer
Industrial Tribunal
2nd Floor, City Civil Court Buildings
High Court, Chennai 600 104.